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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES DAVID WELTON,

Defendant and Appellant.

E071219

(Super.Ct.No. BAF1800705)

OPINION

APPEAL from the Superior Court of Riverside County. Samuel Diaz, Jr. and Mark E. Johnson, Judges.\* Affirmed.

Dejan M. Gantar, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant, James David Welton, pled guilty to possession of a firearm by a felon. (Pen. Code, § 29800, subd. (a)(1).) Defendant additionally admitted

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\* Judge Diaz ruled on the motion to suppress and Judge Johnson heard the plea.

he had suffered a prior prison term. (Pen. Code, § 667.5, subd. (b).) Pursuant to the plea agreement, the court sentenced defendant to an aggregate term of two years four months of incarceration.

After counsel from Appellate Defenders, Inc. filed a notice of appeal, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the facts, a statement of the case, and three potentially arguable issues: (1) whether the magistrate erred in denying defendant's motion to suppress; (2) whether the issue of whether the magistrate erred in denying defendant's motion to suppress has been preserved for appeal due to defendant's failure to renew the motion before the superior court; (3) whether defendant was erroneously advised of his right to appeal the denial of his suppression motion following his guilty plea rendering his plea invalid; and (4) whether any claim that defendant's plea was invalid by virtue of misadvice should have been brought by petition for writ of habeas corpus. We affirm.

## I. FACTUAL AND PROCEDURAL BACKGROUND

On May 31, 2018, the People charged defendant by felony complaint with possession of methamphetamine for sale (Health & Saf. Code, § 11378; count 1), being a felon in possession of ammunition (Pen. Code, § 30305, subd. (a); count 2), and being a felon in possession of a firearm (Pen. Code, § 29800, subd. (a)(1)). The People

additionally alleged defendant had suffered a prior prison term. (Pen. Code, § 667.5, subd. (b).)<sup>1</sup>

On June 11, 2018, defendant filed a motion to suppress all observations made by police during attempts to confiscate defendant's cell phone; all statements made by defendant after officers detained him; all evidence obtained as a result of the officers' reentry into defendant's residence; and all evidence shown to be the fruit of any of the aforementioned, alleged illegalities. Defendant noted that a previous court had granted the motion to suppress; thereafter, the People refiled the case. On June 29, 2018, the People filed opposition to defendant's motion to suppress.

On July 3, 2018, the date scheduled for the preliminary hearing, the court held a concurrent hearing on defendant's motion and the preliminary hearing. The parties stipulated that the issues presented were whether the detention of defendant, the attempted seizure of his phone, and his subsequent arrest were unlawful; defendant did not challenge the subsequent search of his person and vehicle. The court took judicial notice of documentation presented by the People that Rodolfo and Isaura Eusebio (collectively the Eusebios) both had active warrants for their arrests on August 15, 2017.

Officer Takashi Nishida testified that on August 15, 2017, while on patrol, he observed several individuals, including defendant, standing outside a hotel, one of whom he recognized. He continued to drive so as not to create suspicion; he lost sight of

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<sup>1</sup> The People filed an amended felony complaint on June 21, 2018, which corrected the date of defendant's conviction for the offense from which the People alleged defendant's prior prison term derived.

defendant. The officer spoke with other officers and confirmed the identity of the individual whom he recognized as Isaura for whom he knew there was an active warrant. The officer spoke with a clerk at the motel who identified the Eusebios and informed the officer they were staying in room 215. Rodolfo also had an active warrant for his arrest. The officer later saw both the Eusebios when the officers arrested them inside the hotel room.

The officer requested additional officers to assist him. While waiting to obtain a key to the room and serve arrest warrants on the Eusebios, the officers waited outside their room listening to the activity inside. The officer testified they “wanted the element of surprise.”

A second officer who responded to the call for assistance testified the officers believed the Eusebios were involved in drug and gun sales. While the first officer waited outside the Eusebios’ hotel room, the second officer waited in the lobby; while waiting, the second officer saw defendant exit the elevator, walk through the lobby, and exit the hotel. Hotel personnel alerted the second officer that defendant was also staying in the same room as the Eusebios. Defendant reentered the hotel lobby.

The second officer contacted defendant and asked in which room he was staying. Defendant was uncooperative, asking why the officer would inquire. Defendant said he was visiting friends. The officer told him they were conducting an investigation and that if defendant did not wish to be part of it, he should leave. The officer wished to provide a

security perimeter around the hotel room while awaiting the arrest of the Eusebios.

Defendant refused to leave. He “sat down on a chair and started playing on his phone.”

From where defendant was seated, he “had the ability to maintain visual observation of what . . . [the] officers coming in and out of the hotel of that lobby were doing[.]” The officer told defendant to get off his phone because the officer feared defendant could provide the Eusebios a “play-by-play” via text of what the officer was doing. The officer feared defendant could be informing the Eusebios to destroy evidence, arm themselves, and give away the officers’ positions. Defendant refused to get off his phone.

After twice asking defendant to get off his phone, the officer attempted to take defendant’s cell phone away from him. Defendant pulled it away from the officer. A “slight tug-of-war” ensued between the two over the phone until the officer physically removed defendant from the lobby and placed him in handcuffs. The second officer handed defendant off to a third officer.

The court found the initial contact between the officer and defendant consensual, for which there was no reasonable suspicion to detain. However, once the officer observed defendant using his cell phone, the officer had reasonable suspicion to detain defendant in order to ensure the safety of the officers. Once defendant continued to be uncooperative by refusing to cease the use of his phone, the officer then had probable cause to arrest defendant. The court denied defendant’s motion to suppress.

The court then continued with the preliminary hearing at which an officer testified that a search of defendant after his arrest turned up \$7,496.32 and two bindles of methamphetamine. Inside defendant's vehicle officers found 210, nine-millimeter rounds of ammunition; 26, .45-caliber rounds of ammunition; a nine-millimeter handgun; a rifle magazine containing an unspecified number of rounds of ammunition; unused syringes; more methamphetamine; magazines or books about how to manufacture methamphetamine; and a digital scale. Over defendant's objection, the officer opined that defendant possessed the methamphetamine for the purpose of sales. The court found sufficient evidence to hold defendant to answer. Defendant filed a petition for writ of mandate in this court challenging the court's order denying his motion to suppress.<sup>2</sup> We denied the petition.

Defendant then entered the plea as described above. Defendant admitted that on August 15, 2017, he willfully possessed a nine-millimeter handgun despite being prohibited from doing so due to a previous felony conviction. Defendant also admitted suffering a prior prison term. (Pen. Code, § 667.5, subd. (b).) In return, the court dismissed the additional two counts upon the People's motion.

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<sup>2</sup> We take judicial notice of case No. E071029, the petition for writ of mandate defendant filed on August 2, 2018, which we denied on August 31, 2018. (Evid. Code § 459.)

## II. DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, which he has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

## III. DISPOSITION

The judgment is affirmed.

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McKINSTER  
J.

We concur:

RAMIREZ  
P. J.

RAPHAEL  
J.